



# WASHOE COUNTY

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CM/ACM US  
Finance DN  
DA PE  
Risk Mgt DE  
HR N/A  
Other N/A

## STAFF REPORT

**BOARD MEETING DATE: December 9, 2014**

**DATE:** November 19, 2014  
**TO:** Board of County Commissioners  
**FROM:** Dave Solaro, Arch., P.E., Director  
Community Services Department, 328-2040, [dsolaro@washoecounty.us](mailto:dsolaro@washoecounty.us)  
**THROUGH:** Kevin Schiller, Assistant County Manager  
**SUBJECT:** Recommendation to approve an Interlocal Agreement between Washoe County and the Truckee Meadows Water Authority to Each Provide Services Deemed Necessary to Further the Implementation of the Water Utility Merger. (All Commission Districts.)

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### SUMMARY

The purpose of this report is to support the merger of Washoe County Community Services' Water Utility (CSWU) with the Truckee Meadows Water Authority (TMWA) by recommending the Board of County Commissioners (Board) approve an Interlocal Agreement (ILA) with TMWA to provide services necessary to continue implementation of the water utility merger with TMWA.

The ILA between Washoe County and TMWA provides for the terms, conditions and compensation for services that the County will provide to TMWA after the merger, and also provides for those services that TMWA will provide to the County after the merger.

Services provided by Washoe County to TMWA include:

- Provide data related to geographical information system (GIS) mapping, improvement plans, facility as-built records, maintenance records, customer billing records, etc.;
- Services to permit and facilitate transportation and disposal of waste discharged from the Longley Lane Water Treatment Facility into the South Truckee Meadows Water Reclamation Facility consistent with historic practices by the County;
- Water rights administration and support services, including assisting with preparation of reports, extensions, and permit compliance with the Nevada State Engineer relative to water rights administered by Washoe County;

Services provided by TMWA to Washoe County include:

- Hydrogeological services in connection with Washoe County's Golden Valley Artificial Recharge Program;
- Meter reading services of Washoe County's reclaim water meters; submitting data to Washoe County.

Washoe County Strategic Objective supported by this item: Sustainability of our financial, social and natural resources.

### **PREVIOUS ACTION**

On December 9, 2009, the Board entered into an interlocal agreement governing a proposed merger of CSWU with the TMWA Board of Directors.

The Board and the TMWA Board of Directors held a joint meeting on March 19, 2014, and directed staffs from both entities to complete the merger with an anticipated closing date to occur in December 2014.

On October 28, 2014 the Board approved the Addendum to the Interlocal Agreement Governing the Consolidation of the Washoe County Department of Water Resources Water Utility into the Truckee Meadows Water Authority.

### **BACKGROUND**

TMWA and the Board of County Commissioners entered into the Interlocal Agreement Governing the Merger of CSWU into TMWA dated January 29, 2010, which provides for the merger of the CSWU into TMWA (Merger ILA). Pursuant to Section 5.2 of the Merger ILA, the parties agreed to prepare an Addendum to the Merger ILA upon the completion of due diligence, which addendum would set forth the schedules identifying the Transferred Assets, Excluded Assets, Assumed Liabilities, and Excluded Liabilities and disclosures of conditions as set forth in Article VI of the Merger ILA.

In connection with the merger, a number of County employees with operations expertise will become employees of TMWA on the closing date of the merger. Washoe County will continue to provide wastewater utility services after the merger, and will retain employees with expertise in water resource management.

Washoe County will need to continue certain water related services into the future as areas of Unincorporated Washoe County continue to grow. The expertise associated with only parts of development related services will continue with Washoe County while other expertise will be transferred to TMWA. This interlocal agreement will be a tool available for Washoe County and TMWA staff to utilize in the case that either entity needs to utilize the other entities expertise in the future.

### **FISCAL IMPACT**

The cost of the services outlined in the interlocal agreement with TMWA to provide the services will be paid for from either the General Fund Operating budget of the Community Services Department or the Sewer or Wastewater Enterprise fund depending on where the service is needed. Funds will be budgeted in future years as necessary.

### **RECOMMENDATION**

It is recommended that the Board of County Commissioners to approve an Interlocal Agreement between Washoe County and the Truckee Meadows Water Authority to Each Provide Services Deemed Necessary to Further the Implementation of the Water Utility Merger.

### **POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be:  
"Move to to approve an Interlocal Agreement between Washoe County and the Truckee Meadows Water Authority to Each Provide Services Deemed Necessary to Further the Implementation of the Water Utility Merger."

INTERLOCAL AGREEMENT BETWEEN WASHOE COUNTY AND THE  
TRUCKEE MEADOWS WATER AUTHORITY TO EACH PROVIDE  
SERVICES DEEMED NECESSARY TO FURTHER THE IMPLEMENTATION OF  
THE WATER UTILITY MERGER

This Agreement is dated for identification purposes as of the 31<sup>st</sup> day of December, 2014, notwithstanding the date of the last-executed signature below, by and between Washoe County, a political subdivision of the State of Nevada (hereinafter "County") and the Truckee Meadows Water Authority, a Joint Powers Authority created pursuant to NRS Chapter 277 among Reno, Sparks and Washoe County, Nevada (hereinafter "TMWA").

RECITALS

WHEREAS, Washoe County and the Truckee Meadows Water Authority are public agencies authorized by chapter 277 of the Nevada Revised Statutes to enter into interlocal and cooperative agreements with each other for the performance of governmental functions;

WHEREAS, on or about January 29, 2010, the County and TMWA entered into that certain Interlocal Agreement Governing the Merger of the Washoe County Department of Water Resources Water Utility Into the Truckee Meadows Water Authority ("Merger Agreement") pursuant to which the parties agreed to merge the Washoe County water utility into TMWA.

WHEREAS, in connection with the Merger Agreement, a number of County employees with water operations expertise will become employees of TMWA on the closing date of the Merger.

WHEREAS, the County will continue to provide wastewater utility services and will have employees with expertise in water resource management after the closing date of the Merger.

WHEREAS, NRS Chapter 277 provides that any one or more public agencies may contract with any one or more public agencies to perform any governmental service, activity or undertaking which any public agency, entering into the contract, is authorized to perform.

WHEREAS, the County desires TMWA to provide certain labor and services and TMWA desires County to provide certain labor and services, on the terms and conditions stated herein.

NOW THEREFORE, it is agreed as follows:

1. TMWA Services. TMWA agrees to provide the following services to County (collectively, the "TMWA Services") during the term of this Agreement as reasonably requested from time to time by the County and agreed to by TMWA:

- i) hydrogeological services in connection with Washoe County's Golden Valley Recharge program ("Hydrogeological Services"); and
- ii) reading the County's reclaim water meters at monthly intervals, as requested by County, and submitting reclaim meter read data to County and providing on a monthly basis potable water usage meter data for TMWA customers who are also County sewer customers (collectively "Meter Read Services"). County accepts as standard 1 error per 1,000 meters read for TMWA caused errors and accepts as standard 10 estimates per 1,000 meters for estimates.

In connection with the performance of the TMWA Services, TMWA may engage such employees, agents, contractors and consultants as it shall deem necessary or convenient from time to time. Additional water related administrative services may be requested by County and performed by TMWA at TMWA's discretion on such terms mutually agreeable.

1.1 Compensation for Services. County shall reimburse TMWA for the costs incurred with providing the TMWA Services, including without limitation all costs and expenses for labor, equipment, materials, license and permit fees, laboratory fees, and reasonable fees for general overhead and/or administrative costs. TMWA will track such fees by project code.

1.2 Payment. TMWA shall invoice County on a quarterly basis for these TMWA Services rendered during the previous quarter. County agrees to pay such invoices within thirty (30) days of the date of the invoice. In the event that County disputes part or all of an invoice, County will pay the undisputed amount and provide prompt written notice to TMWA stating the reasons for disputing all or part of an invoice.

2. County Services. County agrees to provide the following services to TMWA (collectively, the "County Services") during the term of this Agreement:

- i) provide TMWA access to and data (in electronic or other format requested by TMWA, to the extent feasible) related to County GIS mapping system, improvement plans, facility as-built records, maintenance records, reports, models, working notes and drawings, billing records, and customer records;
- ii) provide services to permit and facilitate the transportation, disposal and processing of clean in place waste discharge from the Longley Lane Water treatment plant into the South Truckee Meadows Wastewater Reclamation Facility (STMWRF) consistent with historic practices by County prior to the Merger;  
and
- iii) water rights administration and support services, including assisting in preparing and submitting reports, extensions, and permit compliance information with the Nevada State Engineer relative to water rights administered by the County water utility prior to the merger with TMWA ("Water Right Administration").

In connection with the performance of the County Services, the County may engage such employees, agents, contractors and consultants as it shall deem necessary or convenient from time to time. Additional water related administrative services may be requested by TMWA and performed by the County at the County's discretion on such terms mutually agreeable.

2.1 Compensation for Services. TMWA shall reimburse the County for the costs incurred with providing the County Services, including without limitation all costs and expenses for labor, equipment, materials, license and permit fees, laboratory fees, and reasonable fees for general overhead and/or administrative costs. The County will track such fees by project code.

2.2 Payment. The County shall invoice TMWA on a quarterly basis for these County Services rendered during the previous quarter. TMWA agrees to pay such invoices within thirty (30) days of the date of the invoice. In the event that TMWA disputes part or all of an invoice, TMWA will pay the undisputed amount and provide prompt written notice to the County stating the reasons for disputing all or part of an invoice.

### 3. Term and Termination.

3.1 Term. The term of this Agreement shall commence on the effective date (as set forth in Section 7) and unless otherwise terminated as provided herein, shall terminate on the date which is five (5) years after the effective date. The term may be extended by mutual agreement of the parties.

3.2 Termination for Convenience. Either Party may terminate this Agreement upon one hundred eighty (180) day advance written notice to the other. Such termination shall be effected by written notice to the other party specifying the extent and effective date of the termination.

3.3 Termination for Cause. Either party may, upon fifteen (15) days written notice of default to the other party, terminate this Agreement if the other party: i) fails to timely perform any of the services specified in this Agreement or fails to timely make the payments required of such party under this Agreement; and ii) fails to timely cure such default within such fifteen (15) day period.

3.4 Funding Out Clause. In the event TMWA or County fails to appropriate or budget funds for the purposes as specified in this Agreement, such party shall notify the other in writing and the Agreement will terminate on the date specified in the notice. The Parties understand that this funding out provision is required under NRS 244.320 and NRS 354.626. If this Agreement is so terminated, the parties shall, no later than fifteen (15) days following the date of termination, pay for all amounts due under Section 2 through the date of termination.

4. Workers Compensation. Contractors performing any services shall be required to provide certificates of insurance to the agency for whom they are performing

the work. All parties to this agreement are responsible for providing workers' compensation coverage for their respective employees.

5. Entire Understanding of the Parties. This Agreement contains all the obligations and agreements of the parties with respect to the subject matter hereof, and oral or written obligations not contained herein shall have no force or effect to alter any term or condition of this Agreement, unless modified in accordance with Paragraph 6.

6. Amendment. This Agreement may be amended or modified only by the mutual written agreement of the County and TMWA and ratification by their respective governing boards.

7. Ratification By Governing Boards. This Agreement is contingent upon ratification by official action of the governing body of the parties hereto, and shall be effective on the closing date of the Merger.

8. Severability. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement (including, without limitation, Section 1) remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties.

9. Waiver. A waiver of any breach of any provision of this Agreement by any party shall not be construed to be a waiver of any preceding or succeeding breach.

10. Governing Law. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Nevada.

11. Indemnification

11.1 Each Party agrees to be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost, or judgment made against that Party arising from any negligent act or negligent failure to act by any of that Party's employees, agents in connection with the performance of obligations assumed pursuant to this Agreement.

11.2 Each Party further agrees, to the extent allowed by law pursuant to Chapter 41 of the Nevada Revised Statutes, to hold harmless, indemnify and defend the other from all losses, liabilities or expenses of any nature to the person or property of another, to which the indemnified party may be subjected as a result of any claim, demand, action or cause of action rising out of the negligent acts, errors or omissions on the part of employees or agents of the indemnifying party in relation to this Agreement.

12. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person other than the parties any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

13. Dispute Resolution. The parties hereby acknowledge and agree that this Agreement shall be governed, construed and enforced under the laws of the State of Nevada. The parties hereby consent to exclusive venue in Washoe County, Nevada. Any dispute under this Agreement shall be submitted first to mutually agreeable informal dispute resolution before instituting any legal action. Should either party hereto institute a legal action or dispute resolution proceeding of any kind to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, neither party shall be entitled to recover any amount as a reasonable attorney's fee, for any reason, even if said party is deemed to be the prevailing party in such action or proceeding. Costs of suit may be awarded as allowed by law.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IN WITNESS WHEREOF, the Parties have set their hands with the intent to be bound.

TRUCKEE MEADOWS WATER  
AUTHORITY, a Joint Powers Authority  
created pursuant to NRS Chapter 277,

Dated \_\_\_\_\_, 2014

By: \_\_\_\_\_

WASHOE COUNTY BOARD OF  
COMMISSIONERS

Dated \_\_\_\_\_, 2014

By: \_\_\_\_\_  
David Humke, Chairman

ATTEST:

\_\_\_\_\_  
Washoe County Clerk